IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Crl.MC.No. 3007 of 2007()

ST.3336/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR

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PETITIONER: AGGRIEVED

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1. K.M.MOHAMMED BASHEER,
   S/O KUNHEEDU HAJI, 'NOOR MAHAL'KOTT, KALLINGAL,
   TIRUR, MALAPURAM.(PRESENTLY AT PHOENIX
   INTERNATIONAL, SABIHAH COMMERCIAL COMPLEX,
   FOURTH FLOOR, OFFICE NO.8, FARWANIA STREET NO.14,
   P.O.BOX.557,CODE NO.81000-FARWANIA,KUWAIT)

2. K.ABDUL WAHID,
   S/O K.M.MOHAMMED BASHEER,
   'NOOR MAHAL'KOTT, KALLINGAL, TIRUR,
   MALAPPURAM.

BY ADV. SMT.SANGEETHA LAKSHMANA

RESPONDENTS: STATE, COMPLAINANT AND ACCUSED

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1. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. A.K.MOHAMMED ABDUL RAHIMAN,
   S/O ALI MOHAMMED, ALAYAM KADAVATH HOUSE,
   P.O.PARAVANNA, TIRUR.

3. MOHAMMED USMAN,
   S/O KUNHEEDU HAJI, KIZHAKKAM KUNNATH HOUSE,
   PAAN BAZAR, TIRUR-676101.

4. THE TALUK OFFICER,
   TALUK OFFICE, TIRUR,
   MALAPPURAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/10/2007 ALONG WITH CRL.MC NOS.3019,3059 AND 3061/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.Nos.3007,3019,3059 and 3061 of 2007

Dated this the 4th day of October 2007

O R D E R

A brother of the petitioners faces indictment in four different prosecutions, all under Section 138 of the Negotiable Instruments Act. That brother is absconding. He is not appearing before the court, in obedience to the process issued by the court. The court concerned - Judicial First Class Magistrate Court, Tirur, in these circumstances, was constrained to initiate proceedings against the said absconding accused. The said absconding accused allegedly has fractional right in the family property of the petitioners. To secure the presence of the said accused/brother, share of the said brother/accused in the the common property is being proceeded against under Section 82 and 83 of the Code of Criminal Procedure. The petitioners lament that their joint property is being proceeded against unnecessarily and they are subjected to unnecessary harassment and vexation on account of such proceedings. They have, therefore, come before this court. They make a fair offer that the entire amount due under the cheques involved under the 138

prosecution shall be deposited by them before the learned Magistrate. They pray that the proceedings under Section 82 and 83 Cr.P.C may be avoided.

2. Is the complainant willing to compound the offences alleged against the absconding brother? Admittedly he is not willing. Is the absconding accused willing to appear before the learned Magistrate? Obviously he is also not willing. The plight of the petitioners is unfortunate in the sense that fractional right of the absconding brother in the common property is being proceeded against. But the consequences appears to be unavoidable. Proceedings are initiated under Section 82 and 83 Cr.P.C against the property of an absconding accused not to recover any amount but to ensure that he complies with the decision of the court and appears before the court. It is to secure the presence of the absconding brother that the property is attached and not at all for the recovery of any amount. In these circumstances, the offer to remit the amounts covered by the cheques cannot be of any help. The said offer cannot, in these circumstances, persuade the court to accept the prayer in these four Criminal Miscellaneous Cases and direct

discontinuance of the coercive proceedings initiated against the absconding brother. The petitioners' plight may be unfortunate. Their brother has brought misery to them - more particularly to the fractional share of his in the joint family property. The petitioners must either get the absconding brother before court or they must persuade the complainant to compound the offences against the absconding brother. No better solutions appear to be in sight for me.

3. These Criminal Miscellaneous Cases are in these circumstances dismissed.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007